IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6757 OF 2004

Shakti Capacitors Pvt. Ltd. .... Petitioner

- Versus -

1. Regional Provident Fund Commissioner, 341, Bhavishyanidhi Bhavan, Bandra (East), Mumbai.

2. Abhay Kumar Mandal, Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Sub-Regional Office, Bhavishyanidhi Bhawan, CST No.238/6, Tarabai Park, General Thorat Marg, Kolhapur-416 003. .... Respondents

Shri Manish Desai and Sowjanye Menon i/b M/s. Paras Kuhad and Associates for the Petitioner.

Shri M.S. Karnik for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 30, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule made returnable forthwith.

2. The petitioner challenges the order dated 28-7-2004 passed by the respondent No.2 purportedly in exercise of

powers under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter called as "the said Act", amongst various grounds, the same being in violation of the basic principles of natural justice as the same has been passed without even affording a fair opportunity of being heard in the matter to the petitioner.

3. Few facts relevant for the decision are that a notice under Section 7A of the said Act came to be issued in 28-11-2003 claiming dues to the extent of Rs.10,12,951/-. The same was followed by an order issued to the Manager of M/s. Vasantdada Shetkari Sahakari Bank Limited, the bankers of the petitioner, for attachment of the bank account. Thereafter certain recovery proceedings for attachment and sale of the properties were taken out by the respondents for recovery of the said amount. A notice dated 21-7-2004 came to be issued in relation to the interest and damages which were sought to be recovered from the petitioner in exercise of the power under Sections 7Q and 14-B respectively of the said Act for a total amount of Rs.9,17,737/-. According to the petitioner, the said notice was received at the factory premises and the said notice required the attendance of the petitioner for hearing on 28-7-2004 and as the Managing Director of the petitioner was out of town, by letter dated 27-7-2004

the petitioner requested for two weeks' time to do the needful in the matter and therefore to postpone the hearing which was scheduled to take place on 28-7-2004. The fact that the said letter was sent to the office of the respondents and it was received by the office of the respondents on 28-7-2004 is not in dispute. However, the respondents, considering the absence of the petitioner on the date of the hearing i.e., 28-7-2004, proceeded to pass the impugned order.

4. Upon hearing the learned Advocates for the parties and on perusal of the records, including the affidavit in reply, it is apparent that pursuant to the notice dated 21-7-2004, issued to the petitioner and receipt thereof, a specific request was made by the petitioner for postponement of the hearing and to grant fifteen days' time to submit the necessary explanation, if any, on the part of the petitioner in answer to the said notice. However, ignoring the said request, the respondents proceeded to dispose of the matter by passing the impugned order. The impugned order merely records that the notice was issued directing appearance of the petitioner on 28-7-2004 with all the records, however, the petitioner failed to attend the hearing and therefore the respondents had no reason to prolong the proceedings and hence decided to finalise the case. Once it is apparent that the notice was issued on

21-7-2004 fixing the hearing of the matter on 28-7-1004, and though one can understand the anxiety on the part of the authority to dispose of the matter expeditiously, it is to be noted that once the party had disclosed genuine difficulty about the absence of the concerned person in the town and had requested for some more time, and that was hardly of two weeks, one fails to understand as to what was the justification for showing such a hurry in disposing the matter without even giving one opportunity to the petitioner of being heard in the matter. The learned Advocate for the petitioner, therefore, is justified in contending that the impugned order apparently discloses denial of fair opportunity to the petitioner and therefore the same is in contravention of the basic principles of natural justice and on that count alone the same is liable to be set aside and the matter to be remanded with the directing to give an opportunity to the petitioner to put forth his say in the matter with reference to the notice dated 21-7-2004, and after affording personal hearing in the matter, to decide the case in accordance with the provisions of law.

5. The petition, therefore, succeeds. The impugned order is hereby quashed and set aside and the matter is remanded to the respondent No.2 with the direction to allow the petitioner to put forth their say in the

matter within three weeks from today and thereafter the respondent No.2 to fix the date for personal hearing in the matter on which day the petitioner shall make necessary arrangement for appearance before the authority and thereupon the authority shall decide the matter in accordance with the provisions of law. The rule is made absolute in above terms with no order as to costs.

6. It is made clear that this Court has not expressed any opinion on any of the issues in the matter in question or in relation to the dues claimed by the respondents as well as on the point of alleged interest and damages.

7. Parties may be provided with the authenticated copy of this order.